

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

FRANK WATERHOUSE,

Plaintiff,

v.

Civil No. 07-1716-HA

OFFICER RONALD FRASHOUR,
OFFICER JOSHUA BOCCHINO,
OFFICER JENNIFER MUSSER,
OFFICER JACK BLAZER,

ORDER

Defendants.

HAGGERTY, District Judge:

Plaintiff brought suit against defendants under 42 U.S.C. § 1983. On September 18, 2009, a jury returned a verdict against defendants Ronald Frashour and Joshua Bocchino for their use of excessive force in seizing plaintiff Frank Waterhouse. Plaintiff now advances a Motion for an Award of Attorney Fees [97]. After reviewing the briefing and all declarations, this court determined that oral argument is unnecessary. For the following reasons, plaintiff's Motion for an Award of Attorney Fees is granted in part.

DISCUSSION

Pursuant to 42 U.S.C. § 1988(b) this court may, in its discretion, award reasonable attorney fees to a party prevailing under 42 U.S.C. § 1983. To determine whether a request for attorney fees is reasonable, the court must determine the "lodestar" amount - the number of hours reasonably spent on the litigation multiplied by a reasonable hourly rate. *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 563-64 (1986); *Jordan v. Multnomah County*, 815 F.2d 1258, 1262 (9th Cir. 1987). Although the lodestar figure is presumptively reasonable, the court may adjust that amount after considering the factors set forth in *Kerr v. Screen Guild Extras, Inc.*, 526 F.2d 67 (9th Cir. 1975). *Morales v. City of San Rafael*, 96 F.3d 359, 363-64 (9th Cir. 1996).

Defendants objects to plaintiff's request for attorney fees as unreasonable. Specifically, defendants object to the hourly rates requested by plaintiff's attorneys Benjamin Haile (Haile) and J. Clay McCaslin (McCaslin), and to the number of hours spent litigating this matter.¹ Defendants also contend that plaintiff's "partial success" should result in a further reduction in the amount of attorney fees and costs awarded.

This court has examined all of defendants' objections; most are without merit, and those objections are overruled without further comment.

1. Hourly Rates

The court uses the 2007 Oregon State Bar Economic Survey as an initial benchmark to determine whether an attorney's requested rate is reasonable. Both Haile and McCaslin have

¹ This court notes that the number of hours required to try this matter by plaintiff's counsel could have been greatly reduced had defendants accepted plaintiff's settlement offers. Defendants' refusal to participate in settlement negotiations in this case is puzzling.

requested compensation rates at the higher end of the range provided for in the Economic Survey. In support of their request, plaintiff's counsel cite the positive result obtained at trial and the alleged difficulty of trying this case. Defendants assert that given the relative experience of each attorney, and the simple nature of this case, that counsel's requested rates should be reduced.

This court has reviewed counsels' performance during trial, as well as all relevant factors regarding the determination of a proper rate. After this review and analysis, this court concludes that Haile is entitled to a reasonable hourly rate of \$210 and McCaslin is entitled to a reasonable hourly rate of \$225.

2. Clerical Work

Defendants object to various time entries submitted by both attorneys asserting that the work completed was of a clerical, rather than legal, nature. Haile concedes that he erroneously claimed 4.2 hours of clerical work. This court has reviewed Haile's billing statement and determines that a further 4.1 hours was included erroneously and that a total of 8.3 hours must be subtracted from Haile's fee petition. The court has also reviewed McCaslin's billing statement and determines that 2.1 hours of time should be subtracted as clerical work. This court also grants defendants' objections to .3 hours of time billed by attorney Leah Greenwald.

3. Consultation with Attorneys not Associated with the Case

Defendants contend that it is unreasonable to bill for time spent consulting with outside attorneys. As a general matter, nothing precludes an attorney from consulting with other attorneys while diligently representing his or her client. However, the court has reviewed both Haile's and McCaslin's billing statements and finds that several entries submitted by Haile did not constitute legal work. Therefore the court subtracts .8 hours from Haile's fee petition.

4. Entries Not Associated with this Case

Defendants contend that plaintiff's attorneys included billing entries for time spent working on issues not directly associated with the litigation before this court. Defendants' objection is granted with respect to .2 hours billed by Ms. Greenwald for time spent obtaining a search warrant that appears unrelated to the issues litigated in this court.

5. Partial Success

When a plaintiff prevails on some, but not all of his or her claims, the court must utilize a two-step test to determine whether plaintiff should recover fees for time spent litigating those claims. *Webb v. Sloan*, 330 F.3d 1158, 1168 (9th Cir. 2003). First the court must determine whether the claims are related to the claims on which he or she prevailed. *Id.* A claim is unrelated if it is "entirely distinct and separate from the claims on which the plaintiff prevailed." *Id.* (quotation and citation omitted). Hours expended on unrelated and unsuccessful claims are not recoverable. *Id.* Second, the court must "consider whether 'the plaintiff achieve[d] a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award.'" *Id.* (citation omitted).

Under the test described above, the only issue plaintiff litigated unsuccessfully that was "entirely distinct and separate" from the claims on which he prevailed, was plaintiff's "unreasonable threat" claim. Accordingly, the court subtracts 2.2 hours from Haile's billing statement for time spent litigating the "unreasonable threat" claim.

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CONCLUSION

For the foregoing reasons, plaintiff's Motion for Attorney Fees [97] is GRANTED IN PART. Plaintiff is awarded \$143,253.00 in attorney fees and expenses in the amount of \$3,558.26. Plaintiff may submit a supplemental motion for attorney fees for time spent litigating this motion.

IT IS SO ORDERED.

Dated this 12 day of November, 2009.

/s/ Ancer L. Haggerty
Ancer L. Haggerty
United States District Judge